

Only the quantum of compensation being the subject matter of this appeal, a brief reference to the background facts would suffice. On 25.07.1989, the claimant

Smt. Sujan Devi, then about 34 years in age and working as a teacher in Government School while travelling in a taxi-jEEP bearing registration No. RRT 576 going from Paloda to Udaipur sustained injuries when the jeep capsized in Pindawal valley. The injuries so sustained by the claimant included fractures of 2nd, 10th and 11th ribs right side and 9th rib left side; and fracture of D-11 vertebra.

Stating the liability of the driver, owners and the insurer of the vehicle involved in the accident, the claimant-appellant submitted the claim application and while narrating the incident aforesaid, for the purpose of quantification of compensation averred that she was 34 years in age and was working as teacher at Government Girls Middle School, Savla earning monthly emoluments at Rs.1,738/-; that in the accident she had suffered several grievous injuries including fracture of her vertebral column; that she was admitted to the hospital at Banswara and on the medical advice was referred to Ahmedabad and remained hospitalised at Seth Vadi Lal Sarabhai General Hospital, Ahmedabad and then at Dinesh Orthopedic Private Clinic; that, despite taking all possible treatment, fracture of vertebral column has not cured and she had been advised complete bed rest for indefinite time and there was no possibility of improvement; that the injuries have resulted in ruining her entire life and putting her at perennial

pains and sufferings. The claimant asserted that her disability has been certified by the doctors concerned at 100% and she has lost the chances of future earnings in her service and so also of promotions. Stating other losses on treatment expenditure, attendants; and so also the loss of amenities of life and pains and sufferings, the claimant claimed a sum of Rs.11,55,289.95 as compensation.

The claim application was contested by the non-applicant-insurer stating general denial of claim averments and so also alleging violation of policy conditions by the insured and of its limited liability under the policy in question. The non-applicant No.1, driver of the offending vehicle asserted that the accident occurred for sudden oncoming roadways bus for which the taxi-jeep was taken down the road and got stuck in quicksand. The non-applicants Nos. 2 and 3 also relied upon the same assertions as made by the driver of the vehicle about the accident having occurred for an oncoming vehicle and for the road conditions.

After framing of necessary issues on the pleadings of the parties, the Tribunal recorded the evidence wherein two claim cases relating to the same accident were considered together and the respective claimants Mohan Lal and Smt. Sujan Chaubisa were examined as AW-1 and AW-2 respectively. No evidence was led by the non-applicants.

After examining the entire evidence on record, the learned Judge found in issue No.1 that the accident occurred for rash and negligent driving of the jeep driver. In relation to the injuries on the person of the appellant, the Tribunal made the following observations:-

“प्रार्थिया सुगनदेवी ने अपने बयानों में यह भी बताया है कि इस दुर्घटना के कारण उसकी रीढ़ की हड्डी में फ्रैक्चर हो गया। उसने अपना चोट प्रतिवेदन प्रदर्श पी-7 भी प्रस्तुत किया है जिसके अनुसार भी उसकी पसलियों एवं वर्टीब्रा में फ्रैक्चर होना दर्शित होता है। उसने अपने ईलाज के कागजात भी प्रस्तुत किये हैं। प्रदर्श-129 माइलोग्राफी की रिपोर्ट है। प्रदर्श-131, 132 एवं 133 भी प्रार्थिया सुगनदेवी की रिपोर्टें हैं। वह जब न्यायालय में बयान देने आई तब भी वह व्हील चेयर पर बैठकर आई थी। प्रदर्श-5 एक प्रमाण पत्र है जिसके अनुसार प्रार्थिया का पूरा शरीर 100 प्रतिशत स्थायी रूप से अपंग हो चुकी है। इन परिस्थितियों में यह स्पष्ट है कि इस दुर्घटना के कारण प्रार्थिया के बहुत गंभीर चोट आई और वह शारीरिक रूप से अक्षम हो गई।”

For quantification of compensation in issue No.2 in relation to the present appellant, the entire of the considerations adopted by the Tribunal contained in paragraph 14 of the impugned award reads thus:-

“इस विवाद्यक का सिद्धि का भार भी प्रार्थीगण पर है। प्रार्थिया सुगनदेवी ने बहुत बढ़ा-चढ़ाकर क्लेम प्रस्तुत किया है। उसने 5,52,000/- रुपये तो आय में कमी के मांगे हैं जो किसी भी प्रकार से न्यायोचित नहीं हैं क्योंकि उसके स्वयं के कथनानुसार वह अभी-भी राजकीय सेवा में है। अतः उसकी आय में कोई कमी होना सिद्ध नहीं

होता है । उसने दवाईयों एवं टैक्सी के जो बिल पेश किये हैं, उनका योग लगभग 40,000/- रुपये बनता है । वह स्थायी रूप से अपंग हो गई है । उसने कई महीनों तक शारीरिक एवं मानसिक यंत्रणा भोगी है और भविष्य में भी ये यंत्रणा उसे रहेगी और वह अपने दैनंदिनी कार्य ढंग से नहीं कर पायेगी । इन सभी परिस्थितियों को देखते हुए उसे मेरे मत में 1,75,000/- रुपये क्षतिपूर्ति के दिलाये जाना उचित है ।"

Therefore, without any discussion on the evidence available on record and without application of any of the relevant principles, the Tribunal has proceeded to award a lump sum of Rs.1,75,000/- to the claimant as compensation. The Tribunal has also put stipulation in the impugned award that the award amount shall be paid within one and half months from the date of award else the non-applicants would be liable to pay interest @ 9% per annum. In other words, the claimant has been denied interest from the date of filing of the claim application and penal interest has been stipulated for non-payment of the award amount within one and half months. The Tribunal has of course rejected the grounds taken by the insurer for its exoneration for want of evidence.

Assailing the award aforesaid, learned counsel for the appellant has strenuously contended that the quantum of compensation so awarded by the Tribunal from all angles remains too low and grossly inadequate particularly when viewed in the context of the fact that the claimant has suffered

100% disablement with fracture on her vertebral column and the impugned award deserves suitable enhancement. Learned counsel relied upon the decisions of the Hon'ble Supreme Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd & Ors. : 1995 (1) ACC 281 and in Ashwani Kumar Mishra Vs. P. Muniam Babu & Ors. : 1999 ACJ 1105. On the other hand, learned counsel for the insurer has duly supported the impugned award with the submissions that though the award has been made by the Tribunal in lump sum, however, in the overall circumstances of the case and looking to the period of incident, the award cannot be said to be grossly inadequate so as to warrant interference in appeal.

It was noticed during the course of hearing of this appeal that before the record was transmitted to this Court by the Tribunal, Part 'B' and 'C' thereof had already been weeded out with the result that no documentary or oral evidence is available on record. Learned counsel for the parties were requested to supply the copies of the relevant papers available with them. Learned counsel for the claimant-appellant has placed on record copies of pleadings and a certificate (Ex.5) issued by Dinesh Orthopedic Hospital, FIR, Site Inspection Report and a copy of injury report dated 25.07.1989; but both the learned counsel have expressed their inability to supply any copy of oral statement made in this case. However, even on

the basis of the material whatever available on record and the observations as made by the Tribunal in the impugned award, it remains undeniable that the claimant-appellant had suffered fracture at vertebral column and has been certified with 100% disablement as a 'case of total paraplegia'. It has been noted by the Tribunal that she attended the Tribunal for the purpose of statements on a wheel-chair. It is of course true that she has admitted to have not lost her services and, therefore, this Court is of opinion that no case is made out for awarding any amount towards future loss of income; yet in view of the fact that the claimant-appellant had suffered such extensive grievous injuries as those of fractures of ribs and the fracture of vertebral column, it appears to be a fit case where the claimant deserves to be adequately compensated for the loss of amenities of life and pains & sufferings and so also for permanent attendants.

The Tribunal has observed that the bills of treatment expenditure and transportation produced on record added up to Rs.40,000/- however, thereafter the Tribunal has abruptly picked up the figure of Rs.1,75,000/-- to be awarded as total compensation in this case. Making of the award in lump sum in such a cursory manner cannot be approved.

This Court is clearly of opinion that the amount of compensation in a vehicular accident case ought to be made on some basics and on some rationale; and the shortcut of awarding compensation in a lump sum cannot be adopted in every case and least in the manner as chosen by the learned Tribunal in the present case. The Hon'ble Supreme Court in R.D. Hattangadi's case (supra) has observed,-

"Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

Though other part of the documentary and oral evidence is not available, however, this Court is of opinion that reasonable compensation on the basis of the material available and with reference to the principles applicable could be assessed thus: (i) the claimant deserves to be allowed Rs.40,000/- as allowed by the Tribunal towards treatment and transportation expenditure. (ii) The claimant has undergone treatment from 25.07.1989 to 05.09.1989 and in view of the long drawn treatment and in view of the nature of injuries, it appears appropriate to allow a sum of Rs.20,000/- to the claimant towards attendants and other expenditure related with hospitalisation. (iii) Looking to the nature of injuries, it appears appropriate to allow a sum of Rs.10,000/- to the claimant towards extra and special diets. (iv) In the overall circumstances of this case, this Court is of opinion that another sum of Rs.50,000/- deserves to be allowed to the claimant for the expenditure in future on attendants particularly when she had been shown to be carrying the effects of fracture on her backbone and she is likely to be dependent on attendants all through her life. (v) In view of the extensive injuries suffered by her, it appears appropriate to allow another sum of Rs.30,000/- towards pains and sufferings. (vi) Having regard to the facts and circumstances of the case and the nature of injuries suffered by the claimant-appellant in 34 years of her age, this

Court is of opinion that she deserves to be allowed a sum of Rs.1,50,000/- towards loss of amenities of life. The claimant is, therefore, entitled for compensation in the sum of Rs. 3,00,000/- (40,000/- + 20,000/- + 10,000/- + 50,000/- + 30,000/- + 1,50,000/-).

The award made by the Tribunal in the sum of Rs.1,75,000/- obviously remains too low and insufficient and there appears no reason for not allowing compensation minimum at Rs.3,00,000/- to the claimant-appellant.

The Tribunal has further seriously erred in depriving the claimant-appellant of reasonable interest on the award amount from the date of filing of the claim application. Ordinarily, in a vehicular accident claim case, the claimant is entitled for interest on the award amount from the date of filing of the claim application as envisaged by Section 171 of the Motor Vehicles Act and a claimant deserves not be deprived of such component of interest unless the claimant could be said to have delayed the disposal of the claim application intentionally. There appears no reason or justification in this case for which the Tribunal has chosen not to award reasonable interest to the claimant from the date of filing of the claim application.

Having regard to the period of incident and the time spent in this litigation and the present prevalent rates of interest,

this Court is of opinion that interest of justice shall be served if the claimant-appellant is awarded interest @ 7.5% per annum on the entire award amount, after adjustment of the amount already paid under No Fault Liability, from the date of filing of the claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The award made by the Tribunal is modified and instead of Rs.1,75,000/- awarded by the Tribunal, the claimant-appellant is awarded compensation in the sum of Rs.3,00,000/-. After adjustment of the amount already paid under interim award, the claimant-appellant shall be entitled to interest @ 7.5% per annum on the entire amount from the date of filing of the claim application.

The remaining amount payable under the modified award shall be deposited by the respondent-insurer within 30 days from today with the Tribunal. Upon deposit, 50% of the amount be placed in a Monthly Income Scheme of Post Office for a minimum period of six years with the claimant being entitled to receive periodical interest thereupon; and remaining 50% of the amount be paid cash to the claimant.

In the circumstances of the case, parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

MdHdV